

TO THE HONORABLE MARK PITTMAN

RE #4:18-cv-00341-P

MOTION TO SUBSTITUTE MAGISTRATE JUDGE FILED

IN THIS ACTION AND RE-OPEN

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS	
MAY 11 2020	
CLERK, U.S. DISTRICT COURT By <u>THIS CAUSE AND</u> <u>NO</u> Deputy	

Comes now, JOE LUTZ, PLAINTIFF IN

WOULD SHOW THE FOLLOWING:

PLAINTIFF ENTERED THIS COURT WHILE STILL APPEARING IN STATE COURT TO HAVE STEP BY STEP PROOF OF MY ALLEGATIONS. FIRST, THE STATE COURT JUDGE ISSUED A CLEWELT SIGNED, DATED FORT WORTH POLICE DOCUMENT ESTABLISHING PLAINTIFFS INNOCENCE, PRESENTED IN OPEN COURT BY PLAINTIFFS COURT APPTD. COUNSEL. STATE JUDGE IGNORED THIS DOCUMENT OF PROOF AND ERRED IN HIS DECISION TO WAIT ON MEDICAL, WHICH WAS IMMATERIAL TO CASE AT HAND, A VIOLATION OF PLAINTIFFS 14TH AMEND. DUE PROCESS.

AS THIS DOCUMENT WAS PRESENTED TO JUDGE IN OPEN COURT, WHERE IT BECOMES PART OF RECORD, THE SUPREME COURT, IN BERRY V. MARYLAND, 323 U.S. 83, HELD THAT SUPPRESSION BY PROSECUTION OF EVIDENCE FAVORABLE TO ACCUSED, VIOLATES DUE PROCESS, 14TH AMEND., WHEN MATERIAL EITHER TO CONV. OR PUNISHMENT. THE STATE COURT SHOULD HAVE DISMISSED FOR LACK OF PROBABLE CAUSE AT THE ONSET.

TO FURTHER COMPOUND THIS CASE, THE STATE COURT, AFTER MY DISMISSAL AT FIRST APPEARANCE OF ATTORNEY, FILING A GRIEVANCE ON HIM AND JUDGE WITH BAR ASSOCIATION AND JUDICIAL CONDUCT COMMISSION, THE STATE COURT APPOINTED MY FORMER ATTORNEY'S EMPLOYER TO MY CASE. ART 26.04 (A) T.C.L.F. STATES COURT SHALL (EMPHASIS ADDED) APPOINT AN ATTORNEY FROM

"A LIST USING A SYSTEM OF ROTATION -- SHALL APPOINT FROM NEXT 5 NAMES ON APPOINTMENT LIST OR MAKE A FINDING OF GOOD CAUSE TO APPOINT OUT OF ORDER."

PLAINTIFF HAS REQUESTED SUBPOENAS TO REQUEST DISCOVERY FROM THIS COURT TO NO AVAIL. ART. 26.04 T.C.C.P., CONTINUES TO STATE "AN ATTORNEY APPOINTED DOES NOT ACCEPT A CASE THAT INVOLVES A CONFLICT OF INTEREST" AS A PRINCIPAL IN THE FIRM OF MY FORMER ATTORNEY, THE CONFLICT IS APPARENT. HENCE, THIS BECOMES A 6TH AMEND., DEPRIVATION OF ADEQUATE COUNSEL VIOLATION. ART. 26.04(b)(5) T.C.C.P., STATES THAT APPOINTED ATTORNEY SHALL PERFORM ATTORNEY'S DUTY OWED TO DEFENDANT IN ACCORDANCE WITH ADOPTED PROCEDURES.

PLAINTIFF REQUESTED OF THIS COURT TO CONTACT THE DEPT OF JUSTICE ON HIS BEHALF AS THIS FEDERAL AGENCY NEVER ACKNOWLEDGED PLAINTIFF'S MORE THAN 20 PAGES OF COMPLAINTS HE SUBMITTED ONLINE IN THEIR WEBSITE AS WELL AS NUMEROUS PHONE CALLS THAT WERE UNANSWERED. WHEN FORT WORTH POLICE CAME AND VERIFIED MY INFO, WHY DID THEY NOT ISSUE ANOTHER DOCUMENT, VALID UNTIL THE FOLLOWING YEAR, LIKE THE EXHIBIT PLAINTIFF ENTERED IN THIS CAUSE. IF DOJ HAD AN ADDRESS ON THE PLAINTIFF OF FORT WORTH, THAT PROVES PLAINTIFF'S INNOCENCE, AS HE HAS JUST MOVED FROM SACRAMENTO.

THE STATE COURT SHOULD HAVE REALIZED (OR THE PROSECUTION) THAT THERE WAS A DOCUMENT DATED SHOWING PLAINTIFF WAS TRULY REGISTERED AT TIME OF ARREST, AFTER ALL, POLICE VERIFIED INFO FOR ANOTHER YEAR. THAT WOULD MEAN THAT THEY SWORE FALSELY TO OBTAIN AN INDICTMENT. PLAINTIFF HAS REQUESTED THE APPOINTMENT OF COUNSEL NUMEROUS TIMES SINCE FILING IN THIS COURT.

THE STATE COURT INCARCERATED PETITIONER WHO WAS A PRE-TRIAL DETAINEE, AFFORDED MORE PROTECTION THAN CONVICTED PRISONERS AND COURTS HAVE HELD CANNOT BE POLLED. SEE BELL v. CLEVELAND, 995 F.2d 1861, YET ANOTHER 15TH AMEND. DUE PROCESS VIOLATION.

AT MINIMUM, DUE PROCESS REQUIRES AN OPPORTUNITY TO HAVE CLAIMS HEARD IN A MERITFUL MANNER. U.S. CONST. AMEND. 14. NOW WE COME TO THE CLAIM AGAINST THE TEXAS BOARD OF PAROLES. OVER TEN YEARS AGO, WHEN PETITIONER WAS RECEIVED ON HIS RELEASE AND REPORTING AT THE SOUTH OAK CLIFF PAROLE OFFICE, I WAS PLACED UNDER A MS. HIGGINS, A PSYCHIATRIST IN PAROLES EMPLOY.

HIGGINS INFORMED ME THAT AS I HAD NEVER ADMITTED GUILT IN MY ONLY PAST OFFENSE, I WOULD BE REQUIRED, BY THE BOARD, TO SUBMIT TO A POLYGRAPH EXAM. THE MATERIAL TO BE COVERED BY SAID EXAM WAS MADE UP BY HIGGINS AND PAROLE BOARD. THE EXAM WAS GIVEN AT AN OFFICE ON 17TH & N IN FORT WORTH. (MORE ON THIS IN DISCOVERY) FOR MY PARTICIPATION IN THIS EXAM AND WAIVING MY 5TH AMEND. RIGHT TO SELF-INCRIMINATION, HIGGINS STATED THAT UPON PASSING THIS EXAM, SOME SANCTION MAY BE LIFTED. THE ONLY SANCTION I HAD WAS THE ANNUAL REGISTRATION.

PETITIONER PASSED NOT ONLY ONE, BUT THREE SEPARATE POLYGRAPH EXAMS ALL INDICATING TRUTHFULNESS AND NO INVOLVEMENT AT ALL CONCERNING ALLEGATIONS. AND THE TEXAS PAROLE BOARD DID NOTHING, OTHER THAN I WOULD ASSUME, PAY FOR THE EXAMS WITH TAXPAYER FUNDS. THE BOARD DID NOT EVEN DO THE VERY LEAST BY NOTIFYING MY REPORTING AGENT, THE SAGINAW POLICE DEPT. OF THIS FINDING, IN CASE AN EVENT WHICH

HAS JUST TRANSPRIED, SHOULD OCCUR. AS A RESULT OF THE BOARDS INACTION, I HAD LOST HOME, VEHICLES, BOAT, TOOLS, AND ALL POSSESSIONS, ADHERING TO A STATUTE I SHOULD NOT HAVE BEEN FORCED TO LIVE UNDER.

NOW DISCOVERY IS NEEDED TO NAME THESE BOARD MEMBERS WHO, ALONG WITH HIGGINS, ARE POTENTIALLY LIABLE IN PERSONAL CAPACITY FOR PLAINTIFFS' LOSSES. THE SUPREME IN PAUL V. DAVIS, 424 U.S. 693, HELD THAT GOVERNMENT PUBLICATION OF INFORMATION IT KNOWS IS FALSE, KNOWN AS "STIGMA RUS DOCTRINE" LEADS TO DEPRIVATION OF TANGIBLE INTERESTS SUCH AS HOUSING AND EMPLOYMENT.

THESE EXECUTIVE OFFICERS HAD TIME TO DRAZERATE THEIR ACTIONS OR INACTION, WHICH SHOCK THE CONSCIENCE, AS THEY ACTED WITH A PURPOSE TO CAUSE HARM, WHICH, IN FACT, IT HAS CAUSED HARM IN LOSS OF LIBERTY AND PROPERTY TO PLAINTIFF. THE SUPREME COURT HELD "WE CAN HARDLY CONCIEVE OF A STATE'S ACTION BEARING 'MORE STIGMATIZING CONSEQUENCES' THAN LABELING AN INMATE AS A SEX-OFFENDER". VITERI & JONES, 100 S. CT. 1254. THIS CLASSIFICATION IS THE TYPE OF INCIDENT THAT CREATED A PROTECTED LIBERTY INTEREST.

NOW PAROLE BOARD HAS DENIED MY PAROLE AND GIVEN ME A YEAR SET-OFF. PLAINTIFF HAS OVER 140% OF SENTENCE DONE BUT PAROLE IS APPLYING STATUTES I HAVE PROVED, FORCED TO PROVE BY PAROLE, THAT SHOULD NEVER BE APPLIED IN MY CASE. THESE AMOUNT TO ADDITIONAL DUE PROCESS VIOLATIONS, 14TH AMEND. ONCE AGAIN, PLAINTIFF REQUESTS APPOINTMENT OF COUNSEL AND TO BE ALLOWED TO PROCEED WITH DISCOVERY TO BRING TO LIGHT THE NUMEROUS CONSTITUTIONAL VIOLATIONS HE HAS AND STILL IS BEING SUBJECTED TO.

PLAINTIFF HAS BEEN AND IS STILL IN TRANSIT WITHIN THE TEXAS PRISON SYSTEM. AS A RESULT, PLAINTIFF HAS NOT HAD POSTAGE TO SEND IN TIMELY MOTIONS TO THIS COURT. I HAVE BEEN ON THIS TRANSFER FERRICITY OVER 30 DAYS AND RECEIVED MAILING SUPPLIES IN THE PAST WEEK. PRIOR, I HAVE BEEN MOVED TO 3 OR 4 OTHER UNITS.

HONOROUS CONSTITUTION VIOLATIONS HAVE BEEN ALLEGED AND WILL BE PROVEN UPON APPROPRIATE DISCOVERY. PLAINTIFF HAS LOST EVERYTHING AND IT TOOK 3-4 MONTHS TO PAY FOR FILING OF THIS ACTION. THIS CAUSE IS ABOUT JUSTICE AND SHOULD CONCERN THIS COURT BECAUSE STATE COURT HAS VIOLATED PROCEDURE. THE DOJ NEEDS TO INVESTIGATE. STATE PAROLE CONDITION CANNOT BE ALTERED RETROSPORTIVELY. U.S. v. PASKOW, 112 F.3d 873, U.S.C. 14. AMEND 14; VARIOUS Art. Tex. CONST. ART 1 § 17, 19.

PLAINTIFF PRAYS COURT TO KEEP THIS CAUSE OPEN AND GRANT DISCOVERY AND APPOINT COUNSEL.

RESPECTFULLY SUBMITTED,

Joe Lotz Pro Se

Joe Lotz

GARZA EAST

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CERTIFICATE OF SERVICE

A COPY OF THIS MOTION WILL BE PLACED IN U.S. MAIL THIS WEEK OR 5.03.20 TO 4000 BEECKMAN, FORT WORTH, TX.

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Robert Mall

UNITED STATES DISTRICT COURT
FOR THE TENTH CIRCUIT
FORT WORTH, TEXAS

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